



WASTE MANAGEMENT

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May 30, 2019

Ms. Karen Mason-Smith, Remedial Project Manager
Superfund Division
U.S.EPA Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

Subject: Response to Comments on H.O.D. Landfill Institutional Control Plan and
Environmental Covenant; H.O.D. Landfill Superfund Site, Lake County, Antioch, IL
(EPA ID#: ILD980605836)

Dear Ms. Mason-Smith:

Waste Management of Illinois, Inc. (WMIL) has reviewed the U.S.EPA's comments dated April 30, 2019 regarding the draft Institutional Control (IC) Plan and Environmental Covenants (ECs) that were submitted by WMIL on August 14, 2002 and July 21, 2010. In accordance with your requests transmitted by e-mail on May 15, 2019 and May 24, 2019, our timely response to each of the comments is provided below. The response is provided to facilitate the process of finalizing appropriate institutional controls for the H.O.D. Landfill site (Site).

WMIL is familiar with the current version of the model Uniform Environmental Covenant (UEC) utilized by the Illinois Environmental Protection Agency (IEPA). Thus, we do not anticipate any significant obstacles in finalizing an acceptable version of this document for the parcels that are owned by WMIL at the Site. The Village of Antioch, as owner of a portion of the Site, will need to execute a separate EC and provide title commitments for the parcels they own. It should be noted that many of the comments in the April 30, 2019 correspondence were based on a review of an older version of the UEC; those comments are largely addressed using the latest version of the UEC.

Given the current approved end use of the Site, where the public is allowed access to the majority of the Site, the ECs are expected to be the primary institutional control at the Site. Local zoning, ordinances and access controls will also help to ensure that activities on the Site do not adversely affect the remedy.

General Comments on the IC Plan and Environmental Covenant

1. Legal Descriptions: Additional Site Maps of Restricted Area and Contaminated Groundwater Plume: Maps are required which specifically delineate the 7 parcels discussed in the title commitment and the areas of residual contamination. Provide the following in the revised IC Plan:

- A map that identifies the current boundaries of the restricted areas, groundwater contaminant plume, groundwater flow direction, boundaries of the Site, property

ownership, streets, easements, encumbrances, and assessor's parcel number or other recorded plat or survey information

Response: *Updated maps with the requested information are being developed and will be submitted with the revised IC Plan. As noted in previous correspondence there is no defined plume emanating from the site. Well US03D is the only off-site well that has had consistent detects of several VOCs and is located on the map. It is unclear whether the H.O.D. Landfill is the source of the contamination identified at this monitoring well. Regardless, this property is located within the Village of Antioch and is connected to the public water supply. The Village ordinance also addresses this area.*

- Evaluate whether the proposed institutional controls cover the entire area that needs to be restricted, including the contaminated groundwater plume.

Response: *All seven parcels listed in the IC Plan will be subject to groundwater use restrictions.*

- A legal description of each restricted area prepared according to current ALTA Survey guidelines.

Response: *Legal descriptions are being verified and will be included in the revised IC Plan.*

- Geographic Information System (GIS) coordinates (accuracy of at least 0.01 of a foot) that show the current boundaries of restricted areas, boundaries of the Site, utility easements and other encumbrances. Please provide certification from a licensed surveyor that coordinates are accurate within 0.01 of a foot. Please format the coordinates of the restricted areas and boundaries into an ESRI polygon shape file. The shape file shall be projected into the UTM, NAD 83 projection system. Provide an attribute name in the shape file for each polygon submitted (e.g. site boundary, industrial, landfill cap).

Response: *WMIL will provide figures in the revised IC Plan that are developed from the Lake County GIS system and consistent with the examples you provided in your April 30, 2019 correspondence. Please note that it is WMIL and the Village of Antioch's intent to place ECs on each of the seven identified parcels. That area includes the entire landfilled area and some additional area outside the waste limits at the Site. As such, the restricted area will be conservative.*

- Clarification on the number of parcels to be restricted. In this respect, the title work for the Site indicates it consists of 7 parcels, but EPA requires clarification on where those are and whether the legal description in the UECA model covenant covers the entire area of the landfill and off-site location(s). Some information in the draft UECA model covenant and draft IC Plan refers only to 6 parcels.

Response: *There are seven parcels that will be subject to groundwater use restrictions with the ECs. The specific parcels will be clearly presented on a figure in the revised IC Plan. The IC Plan and ECs will be updated to reflect all seven parcels.*

- Proposal for use restrictions for areas outside the fill area, part of the land is outside of the landfill. Besides the restrictions on the landfill, it would be prudent to restrict that land to commercial/industrial uses and restrict groundwater usage. Also, long-term stewardship (LTS) is still needed for long-term protectiveness.

Response: *All seven parcels will be subject to restrictions indicated in the ECs. These parcels extend beyond the landfill footprint.*

A discussion of long-term stewardship will be added to the revised IC Plan. In general, WMIL anticipates that the effectiveness of the ICs would be verified through periodic inspections of the Site by WMIL and U.S.EPA. WMIL's inspections are documented in the annual reports for the Site.

- Clarification of affected acreage. Regarding the Site maps, page 1, Description of Site in the Draft IC Plan - does the "site" refer to the 121-acre, the 51-acre, the old landfill, the new landfill or combination of both landfills?

Response: *The revised IC Plan will include figures and text to clearly define the areas where the ECs will be implemented.*

- Clarification of the areas to be restricted. The Appendix-A Site Map is an accurate map of the area. Drawn on the map is "===" which illustrates the approximate limits of landfill area. Does this delineate the area to be restricted? Additionally, this appears to include 51 acres. What delineates the 121-acre area? Also, please note that this 51-acre area includes both the old landfill and the new landfill.

Response: *The revised IC Plan will include figures and text to clearly define the areas where the ECs will be implemented.*

- EPA reviewed two Illinois Tax property ID maps. Tax ID Numbers and the Parcel descriptions match the Appendix-A Map. However, the anti427.pdf shows a small 1.19-acre parcel with Tax ID number 02-09-300-011 that is not included in the "Site" description. Note that this missing 1.19 acre is in the very middle of the Appendix-A map and is included in the "===" area.

Response: *The revised IC Plan will include figures and text to clearly define the areas where the ECs will be implemented.*

- The Environmental Covenant identifies the "Grantor" as the Village of Antioch, and WMIL as the Grantor/Holder. However, switching back to the property description and the so-called "Site," only 3 parcels are owned by Antioch, while the other 3 parcels are owned by WMIL. Again, this goes back to the definition of the "Site." Which area is the "Site" covered by in the environmental covenants?

Response: *The revised IC Plan will include figures and text to clearly define the areas where the ECs will be implemented.*

- Who owns the 7th parcel identified in the legal descriptions in the title work?

Response: WMIL owns the 7th parcel. The revised IC Plan will include figures and text to clearly define the areas where the ECs will be implemented.

- An overlay of the restricted property on GIS maps.

Response: WMIL will provide an overlay as requested to clearly define the areas where the ECs will be implemented.

2. Title Commitment: Please review the encumbrances and confirm that they do not impact the remedy. Accordingly, WMIL and the Village of Antioch should either attempt to subordinate conflicting easements or provide the easement and leaseholders with a copy of the procedures necessary to protect the remedy. Additionally, because the current Title Commitment was done in 2010, it is now outdated, and we request a 2019 Title Commitment to be submitted.

Response: The encumbrances in the Title Commitment will be reviewed. Previous reviews did not indicate any issues that would potentially impact the remedy for the Site. A new Title Commitment will be included in the revised IC Plan.

3. Communications Plan and Review/Revision of Operation and Maintenance (O&M) Plan for Long-Term Stewardship: EPA requires that a communications plan be included for continued long-term effectiveness of institutional controls (ICs) at the Site. This is necessary to ensure that lines of communication are clear for IC monitoring, maintenance and enforcement. In addition, frequent review of the O&M should continue. EPA and IEPA may determine that a revision is required, if necessary.

Response: A Communications Plan section will be added to the revised IC Plan.

4. For practical purposes, EPA and IEPA need to know whether there an arrangement between WMIL and the Village, whereby counsel (Lisa Zebovitz of Neal, Gerber & Eisenberg, at the time) had approval to recommend the draft Village covenant for the Village's signature and recording? If not, can this be carried out?

Response: Based upon conversations with the Village of Antioch's Administrator, WMIL will prepare a draft EC for the Village of Antioch.

5. Does the Village have ongoing legal representation, so that we can re-visit the issue of the ordinance's effectiveness? As worded, it does not necessarily prohibit the installation of private wells within the Village's limits.

Response: Mr. Robert Long is the attorney representing the Village of Antioch. He can be reached at Daniels, Long & Pinsel LLC; Daniels Law Building, 19 North County Street, Waukegan, IL 60085; 847-623-5900. The Village can also be reached through the Village Administrator, James Keim; 847-395-1000; jkeim@antioch.il.gov.

6. The information regarding "prepared by" and "return this instrument to" needs to be updated, as does the reference to "2010" in the first paragraph for WMIL's and the Village of Antioch's draft covenants.

Response: *The information will be updated as appropriate in the revised IC Plan.*

7. In paragraph 3 of WMIL's environmental covenant, there is no reference to the Village as a "Grantee" whereas in the Village's proposed covenant, there is a reference to WMIL as holder and grantee – was the exclusion deliberate?

Response: *Text will be reviewed and clarified as necessary.*

8. Paragraph 5. B's description of the status of remedial action in both draft covenants for WMIL and the Village Antioch should be clarified – instead of being "fully implemented" (11th line) the remedy "is being implemented." Modify the following sentence to read "Institutional controls necessary for long-term protectiveness are currently being implemented" or merge this into the preceding sentence. Also, reference can be made to the Third Five Year Review (EPA, 2015) in the last two sentences, for clarity.

Response: *Text will be revised as requested.*

9. WMIL's and Village of Antioch's Draft Environmental Covenant. Paragraph 7: What is the purpose of the language "solely as they relate to the ROD remedy"?

Response: *Text will be reviewed and clarified as necessary.*

10. Paragraph 8. A of WMIL's and Village of Antioch's Draft Environmental Covenant: Add "described" after "ROD Remedy" and add to the end, "and any amendments or modifications thereto that U.S. EPA or its successor agency shall approve." – or similar language to preserve the concept that amendments etc. may prompt the need for access.

Response: *The comment is addressed by use of latest version of the IEPA UEC.*

11. Paragraph 8. D of WMIL's and Village of Antioch's Draft Environmental Covenant: Introduce same concept as above in comment 11 and delete the semicolon.

Response: *The comment is addressed by use of latest version of the IEPA UEC.*

Specific Comments

1. **Referencing Page 2, Section II and Exhibit 2:** The Village of Antioch Code Sections 8-1- 1 and 8-2-3-1 do not prohibit installation or use of potable wells within the Village of Antioch. The codes require owners of property "abutting on the public waterworks and sewerage system" to connect structures to the system. The boundaries of the codes are not provided in the draft ICP, so it is not possible to determine whether it would affect properties near the landfill. Nothing was presented to delineate the off-site extent of groundwater contamination and the mechanism to prevent potential exposure to that groundwater through potable well use. The environmental covenant can effectively prohibit groundwater use on the landfill property, but it cannot prohibit its use on other properties. That requires properly executed deed restrictions on adjacent properties, where necessary. The Village of Antioch must provide documentation for an institutional control that prevents installation and use of potable wells within the area impacted by contaminated groundwater. However, EPA and Illinois EPA request that groundwater use restrictions be placed

in the covenants themselves. Reliance upon an ordinance alone is not enough. Ordinances are subject to amendment or repeal, placing the remedy at risk.

If WMIL and the Village of Antioch can prove the groundwater contamination is limited to the H.O.D./Antioch property, then the language in the covenant will suffice. Otherwise, it is recommended that the Village of Antioch sign a Memorandum of Understanding (MOU) with IEPA or look into utilizing the Lake County Permitting Ordinance to adopt a model groundwater ordinance that will address this issue as required in the 1998 Record of Decision (ROD).

Waste Management must provide EPA and IEPA a copy of the groundwater ordinances referenced, along with a Geographic Information Systems (GIS) map that illustrates the areas affected by the groundwater ordinances. The groundwater ordinances are not among those approved by IEPA. As described in the paragraph above, EPA and IEPA have not seen where the boundaries of the ordinances are in relation to the contaminant plume adjacent to the landfill, so it is not possible to discern whether they would pertain to properties affected by the contamination.

Response: The revised IC Plan will include a more thorough description of Site conditions and groundwater use restrictions will be included in the ECs. The Village of Antioch has been informed about the wording of their Codes requiring municipal water connections and the need to revise the language. We assume you will be contacting the Village in this regard. A map depicting the areas subject to the Village Code requirements will be added to the IC Plan. Updated copies of the applicable Codes will also be provided when available from the Village.

2. Referencing Exhibit 1, Exhibit 5 Appendix A, and Exhibit 6 Appendix A: The figure (Figure 3) used in all three sections shows Site conditions before the remedy was implemented. It does not show all the property. Figures must show current Site conditions (conditions that are to be protected by the covenant), and they must show the entire property. The Tax ID Numbers should be included on figures to better delineate ownership. A better-quality image is also required.

Response: An updated Figure 3 will be included in the revised IC Plan.

3. Exhibit 5 (WMIL covenant), Section 2. A. Property: It is not obvious which parcels this covenant pertains to. All parcels are listed (those owned by WMIL and those owned by Antioch). Reference is made to legal descriptions in Appendix B. A cross reference is needed between the parcels identified by the Tax ID Numbers listed in this section and the parcel numbers in the legal descriptions in Appendix B. The parcels owned by Antioch can be listed to complete the record, but they should be listed at the end of the paragraph with a clarifying statement as to why they are included. The section needs a clarifying statement that this covenant pertains to the parcels owned by WMIL.

Response: Parcel ownership has been updated and text will be clarified as necessary.

4. Exhibit 5 (WMIL covenant), Section 7. Activity and Use Limitations:

- a. **Restricted groundwater use:** Per EPA's request, WMIL has recently provided information regarding the extent of off-site groundwater contamination and that is being reviewed by EPA and IEPA. EPA is also aware that H.O.D. Landfill has/had a National Pollution Discharge Elimination System (NPDES) Permit to discharge pollutants that meet regulatory standards into Silver Lake. Please provide an update on and/or a copy of the Site's NPDES Permit and contact

information for the regulatory agency delegated responsibility for managing this Clean Water Act Program. The groundwater data in the 2005, 2010 and 2015 five-year reviews indicate the VOC contaminant vinyl chlorinated exceed the EPA drinking water standard maximum contaminant level (MCL) at well US- 03D, located off-site at the property boundary and outside the fence. Any IC must prevent exposure to groundwater contamination on-site and off-site.

Response: *To our knowledge, the Site was not issued an NPDES permit.*

WMIL and the Village of Antioch are aware of the VOC contamination at US03D. There is no evidence that the H.O.D. Landfill is the source of the contamination identified at this monitoring well. Regardless, this property is located within the Village of Antioch and is connected to the public water supply. The Village ordinance also addresses this area.

- b. **No interference with the Remedy:** This language is useful to protect the ROD remedy but too generic for personal protection. More specific language needs to be added to indicate that any excavation at the Site that penetrates the cap must be done under an OSHA-compliant safety plan, any wastes excavated must be replaced beneath the cap or disposed of properly off-site, and the cap must be restored to the specifications contained in the ROD remedy.

Response: *The draft EC will be revised to address the comment.*

5. Exhibit 5 (WMIL covenant), Section 17.C: More legible copies of the documents in Appendix C are needed.

Response: *The revised EC will include legible copies of all documents.*

6. Exhibit 5 (WMIL covenant): Remove the headers on the first page so that all that space is left blank for the Recorder's office without text

Response: *The comment is addressed by use of latest version of the IEPA UEC.*

7. Exhibit 5 (WMIL covenant): Page 1, Paragraph 1: change 2010 to 2019.

Response: *The date will be updated in the revised EC.*

8. Exhibit 5 (WMIL covenant), Page 3, Paragraph 5D: delete "Gary King, Chief, Bureau of Land, #24" and replace with "FOIA Officer."

Response: *Text will be revised as indicated.*

9. Exhibit 5 (WMIL covenant), Page 4, Paragraph 11A: Change "Kane County" to "Lake County."

Response: *Text will be revised as indicated.*

10. Exhibit 5 (WMIL covenant), Page 6, Paragraph 15: Add this language to the end of the paragraph: "If Grantor no longer owns the Property at the time of proposed amendment or termination, Grantor waives the right to consent to an amendment or termination of the Environmental Covenant."

Response: Text will be reviewed and revised as appropriate. However, WMIL does not agree that it should waive its right to consent to an amendment or termination of the Environmental Covenant if it no longer owns the Property. Even if it sells the Property, WMIL will want to ensure, long term, that certain restrictions remain in place.

11. Exhibit 5 (WMIL covenant), Page 7, Paragraph 18B, second line: delete the word "grant" and replace it with "establishment of activity and use limitation that run with the land." (This is a change made to the model in January 2018).

Response: Comment is addressed by use of latest version of the IEPA UEC.

12. Exhibit 5 (WMIL covenant), Page 9: add the County in the SS and change 2010 to 2019.

Response: Text will be revised as indicated

13. Exhibit 5 (WMIL covenant), Page 10: insert "Sangamon" as the county in the SS block and delete "a delegate of."

Response: Text will be revised as indicated.

14. Exhibit 5 (WMIL covenant), Page 4, Paragraph 11: insert "Lake" as the county in the SS block.

Response: Text will be revised as indicated.

15. Exhibit 5 (WMIL covenant), Page 5, Paragraph 12B: The last clause of the paragraph may be redundant.

Response: Text will be revised as indicated.

16. Exhibit 5 (WMIL covenant), Page 5, Paragraph 12C: Elsewhere ownership is identified as being in fee, and Illinois's current model uses that term here. Is there a reason it wasn't used here?

Response: Comment addressed by use of latest version of the IEPA UEC.

17. Exhibit 6 (Antioch covenant), Section 2, A, Property: comments are same as for the respective section in the WMIL covenant.

Response: Comment addressed by use of latest version of the IEPA UEC.

18. Exhibit 6 (Antioch covenant), Section 7 Activity and Use Limitations: comments are same as for the respective section in the WMIL covenant.

Response: The comment is addressed by use of the latest version of the IEPA UEC.

19. Exhibit 6 (Antioch covenant): Remove the headers on the first page so that all that space is left blank for the Recorder's office without text.

Response: Comment addressed by use of latest version of the IEPA UEC.

20. Exhibit 6 (Antioch covenant), Page 1, Paragraph 1: change 2010 to 2019.

Response: The dates will be updated in the revised draft.

21. Exhibit 6 (Antioch covenant), Page 2, Paragraph 2. B: correct the mailing address to reflect that of the Village of Antioch. Replace with the correct address identified in Paragraph 3. B (e.g., 874 Main Street, Antioch, IL 60002).

Response: Text will be revised as indicated.

22. Exhibit 6 (Antioch covenant), Page 3, paragraph 5. D: delete "Gary King, Chief, Bureau of Land, #24" and replace with "FOIA Officer."

Response: Text will be revised as indicated.

23. Exhibit 6 (Antioch covenant), Page 4, Paragraph 11. A: Change "Kane County" to "Lake County."

Response: Text will be revised as indicated.

24. Exhibit 6 (Antioch covenant), Page 5, Paragraph 12. B: The last clause of the paragraph may be redundant.

Response: Text will be revised as indicated.

25. Exhibit 6 (Antioch covenant), Page 5, Paragraph 12.C: Elsewhere ownership is identified as being in fee, and Illinois's current model uses that term here. Is there a reason it wasn't used here?

Response: Text will be revised accordingly.

26. Exhibit 6 (Antioch covenant), Page 6, Paragraph 15: The language "current owner of the fee simple of the property" is consistent with the IL boilerplate but there may be a word missing, i.e., "current owner of the fee simple interest of the property." Or, "current owner in fee of the property."

Response: Text will be revised accordingly.

27. Exhibit 6 (Antioch covenant), Page 6, Paragraph 16: Should notices still go to Lisa S. Zebovitz? Also, IEPA's current model covenant specifies that notices go to the UECA attorney in the Division of Legal Counsel.

Response: Notice information will be updated.

28. Exhibit 6 (Antioch covenant), Page 7, Paragraph 17. B: Again, "fee" concept is omitted. Also, "owner" is capitalized here and in 17. C, but the term is not defined (note that IEPA's 2014 model covenant is to same effect).

Response: Text will be revised as indicated.

29. Exhibit 6 (Antioch covenant), Page 7, Paragraph 18: IEPA's model covenant has a paragraph requiring compliance reporting; this must stay in.

Response: *Comment is addressed by use of latest version of the IEPA UEC.*

30. Exhibit 6 (Antioch covenant), Page 7, Paragraph 18. B: second line—delete the word “grant” and replace it with “establishment of activity and use limitation that run with the land.” (This is a change made to the model in April 2014).

Response: *Comment is addressed by use of latest version of the IEPA UEC.*

31. Exhibit 6 (Antioch covenant), Page 9: add the County in the SS and change 2010 to 2019.

Response: *Text will be updated accordingly.*

32. Exhibit 6 (Antioch covenant), Page 10: insert “Sangamon” as the county in the SS block and delete “a delegate of.”

Response: *Text will be updated accordingly.*

33. Exhibit 6 (Antioch covenant), Page 11: insert “Cook” as the county in the SS block.

Response: *Text will be updated accordingly.*

34. Exhibit 6 (Antioch covenant), Page 12: insert county in the SS block and change the 2010 to 2019.

Response: *Text will be updated accordingly.*

Based on discussions with U.S.EPA staff, WMIL understands that it is the agency’s desire to have the IC Plan and ECs in place by the end of the agency’s fiscal year. Although WMIL will make reasonable efforts to cooperate with this suddenly expedited schedule, some consideration must be given to the time required to accomplish these tasks when third parties and municipalities are involved. There are no new conditions that provide a basis for the proposed schedule and, as we have noted, it has taken the agency nine years to provide comments on WMIL’s previously submitted documents. WMIL submitted the draft IC Plan and draft ECs to U.S.EPA on July 21, 2010. The first written comments WMIL received from the agency are dated April 30, 2019.

In an effort to advance this process, WMIL agrees to submit a revised draft IC Plan to the agency by July 10, 2019. The draft IC Plan will include the required maps, WMIL’s Title Commitment, and draft ECs for WMIL and the Village of Antioch. At this time, WMIL does not know the Village’s schedule for providing its Title Commitment or the status of the Village’s groundwater ordinance. WMIL is happy to participate in a meeting/call and we understand you will be scheduling that meeting/call.

Ms. Karen Mason-Smith
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If you have any questions, please don't hesitate to contact me or James Forney (jforney@wm.com)

Sincerely,
Waste Management of Illinois, Inc.



Michael Peterson
District Manager – Environmental Legacy
Management Group

cc: James Forney, WM
Michelle Gale, WM
Jennifer Nijman, Nijman Franzetti LLP
James Keim, Village of Antioch
Robert Long, Daniels, Long & Pinsel LLC
Tom Williams, U.S.EPA